

Appln. No. 10/806,947  
Amendment dated September 14, 2006  
Reply to Office Action mailed April 14, 2006

### **REMARKS**

The Examiner has requested confirmation of the provisional election under 35 U.S.C. 121 made during a telephonic interview with Sanjiv M. Chokshi on April 7, 2006 between the following species:

1. the species shown in Figures 1-7;
2. the species shown in Figures 8-13;
3. the species shown in Figures 14-15A;
4. the species shown in Figure 16;
5. the species shown in Figure 17;
6. the species shown in Figures 18-18B; and
7. the species shown in Figure 19.

In response to the Examiner's request, applicant hereby confirms that he has elected Species 3 (i.e., Figures 14-15A) for further prosecution in the present application. Claims 1-12, 14, 15, and 20 are believed to be readable on the elected Species. New Claims 21-23 are also believed to be readable on the elected Species.

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Although the foregoing election has been made without traverse, applicant hereby reserves the right to file a divisional application directed to the non-elected species in the event that no generic claim is found allowable. If a generic claim is found allowable, applicant understands that claims directed to the non-elected species will be entitled to consideration.

In the specification, paragraph [0035] has been amended. Applicant's attorney notes that because support for this amendment can be found in the originally filed drawings (e.g., Figures 6 and 7), the amendment to the specification does not constitute new matter.

All of the pending claims have been rejected based upon prior art grounds. More particularly, Claims 1-9, 11, 12, 14, 15, and 20 have been rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. U.S. Patent No. 6,019,743. Claim 10 has been rejected under 35 U.S.C. 103(a) as being unpatentable over the Cole et al. reference. These claim rejections are respectfully traversed for the following reasons.

The present invention relates to an assembly which includes a pharmaceutical product and a device for delivering the pharmaceutical product to a bodily cavity. As recited in amended Claim 1, the device of the present invention includes a barrel member having a distal end, which includes an opening. Petals extend outwardly from the distal end in a generally axial direction, cooperating with the opening so as to form a receptacle for releasably receiving the pharmaceutical product.

Each of the petals has a base, which is connected to the distal end of the barrel member, and terminates at a truncated flexible tip. As recited in amended Claim 1, each of the petals includes an intermediate section extending between a corresponding one of the bases and a corresponding one of the tips. Each of the petals is sized and shaped such that the entire portion of each of the intermediate sections is spaced from the pharmaceutical product in a radially outward direction and such that only the tips engage the pharmaceutical product at a substantially central portion thereof when the pharmaceutical product is fully received in the receptacle, whereby a large section of the pharmaceutical product extends outwardly beyond the petals so as to facilitate the release of the pharmaceutical product from the receptacle. The tips of the petals form a second opening that maintains a larger diameter than the smallest inner diameter along the length of the barrel member both before and after release of the pharmaceutical product. The barrel member has at least one substantially flexible section located between the distal end and the proximal end such that the barrel member is bendable about the flexible section.

The Cole et al. reference fails to disclose or suggest the novel assembly recited in amended Claim 1. For instance, the Cole et al. reference discloses an applicator for inserting a tampon into a body cavity. There is no disclosure or suggestion of the petals recited in amended Claim 1 (i.e., the tips of the petals forming a second opening that maintains a larger diameter than the smallest inner diameter along the length of the barrel member both before and after release of the pharmaceutical

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product). In such circumstances, it is respectfully submitted that the present invention as recited in amended Claim 1 is patentably distinguishable from the Cole et al. reference. Accordingly, it is believed that amended Claim 1 is in condition for allowance. Because Claims 2, 3, 6, 8-12, 14, 15, 20, and 21 depend, either directly or indirectly, from amended independent Claim 1, they are also believed to be in condition for allowance.

New independent Claim 22 requires that the tips of the petals form a second opening that maintains a larger diameter than the first diameter at the interface between the first and second sections both before and after release of the pharmaceutical product. Accordingly, it is respectfully submitted that the present invention as recited in new Claim 22 is patentably distinguishable from the Cole et al. reference. In such circumstances, it is believed that new Claim 22 is in condition for allowance, along with new Claim 23 which depends from Claim 22.

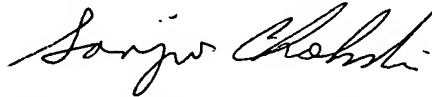
In view of the foregoing amendments and remarks, applicant's attorney respectfully requests reexamination and allowance of Claims 1-3, 6, 8-12, 14, 15, and 20, and examination and allowance of new Claims 21-23. If such action cannot be taken, the Examiner is cordially invited to place a telephone call to applicant's attorney in order that any outstanding issue may be resolved without the issuance of a further Office Action.

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The accompanying Petition for a two-month extension of time authorizes the Examiner to charge the associated \$450 fee to Deposit Account No. 503571. If there are any additional fees due as a result of this Amendment, including extension and petition fees, the Examiner is hereby authorized to charge them to Deposit Account No. 503571.

Respectfully Submitted,

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